

# Mortgage and secured loan arrears: Adviser and Borrower Surveys April 2009

Research from AdviceUK, Citizens Advice, Money Advice Trust and Shelter



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AdviceUK, Citizens Advice, Money Advice Trust and Shelter are undertaking research into how well the government and industry initiatives to lessen the impact of rising mortgage arrears and repossessions are working in England and Wales. The research assesses adviser and borrower views on the impact of the pre-action protocol on lenders' and judges' practices, advisers' experiences so far of the mortgage rescue scheme in England and of changes to support for mortgage interest<sup>1</sup>. A specific aim was to explore whether differences can be seen in the practices of different lender types<sup>2</sup>. In addition the research explores the advisers' views on outcomes and support for clients following repossession.

In this report we summarise findings from:

- A survey of over 500 National Debtline callers with mortgage arrears<sup>3</sup>
- An attitudinal survey of over 380 advisers about initiatives to tackle mortgage and secured loan arrears.<sup>4</sup>

### Conclusion

Many of the policy initiatives reviewed are fairly new and it is too early to fully assess their impact. However, it is of concern that advisers are reporting that not all lenders appear to be following the pre-action protocol.

In order to assess the full impact of these initiatives, we will repeat this survey in October 2009. We intend to publish the results of these surveys, together with results from other research on clients seen by advisers working on court desks by the end of 2009.

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<sup>1</sup> The new Home-owners Mortgage Support scheme which only started up after 14 April 2009 was not included in this review.

<sup>2</sup> The two surveys use slightly different language to describe lender types, see footnotes 3 and 4.

<sup>3</sup> Over 500 of National Debtline's callers with mortgage (first charge) or secured loan (second charge) arrears were surveyed about how their lender(s) had responded to the situation. The data collected reflects the experience of NDL's clients: some of whom had only first or only second charge arrears, whereas others were in difficulty with both first and second charges. National Debtline advisers collected the information throughout April 2009.

<sup>4</sup> The adviser survey was conducted online with 382 advisers from across England and Wales between 1 and 28 April 2009. Advisers working for AdviceUK, Citizens Advice, National and Business Debtlines and Shelter (England) and Shelter Cymru were invited to participate in the survey. Screening questions were used to ensure that only advisers working in England and Wales and who had dealt with relevant cases participated. This survey distinguished between mainstream (prime high street) and other (sub-prime and secured loan) lenders.

## **Key findings**

### **Borrowers in mortgage arrears may not be offered help by their lender**

Of those National Debtline callers with mortgage arrears surveyed:

- 27 per cent of those in mortgage arrears said their lender offered them no help when told about their repayment problems
- 51 per cent of those in arrears with their secured loan said their lender offered them no help when told about their repayment problems
- 57 per cent of those in mortgage arrears were satisfied with the way they were treated by their mortgage lender
- 34 per cent of those in arrears with their secured loan were satisfied with the way they were treated by their mortgage lender.

### **The impact of the pre-action protocol on judges' practices appears to be positive:**

The majority of advisers report that the judiciary have responded to the spirit of the protocol:

- 74 per cent agree that judges are asking more questions about the lenders' attempts to reach agreement with the borrower before taking court action (compared to 24 per cent who disagree)
- 63 per cent agree that judges are willing to adjourn cases where the lender does not appear to follow the protocol (compared to 17 per cent who disagree)

### **The impact of the pre-action protocol on lenders practices appears to be mixed:**

Advisers report that the pre-action protocol seems to have had a greater impact on the arrears and possession practice of mainstream lenders than those of sub-prime lenders and second charge lenders:

- 51 per cent of advisers report that mainstream lenders' arrears collection practices have improved since the pre-action protocol was established; whereas
- only 20 per cent of advisers report that sub-prime and second charge lenders' arrears collection practices have improved since the pre-action protocol was established.

**The impact of the changes to Support for Mortgage Interest (SMI) appears to be mixed:**

It is three months since the changes to SMI were introduced. Advisers report differing experiences:

- 46 per cent of advisers surveyed report no real difference in lenders' practice following the changes to support for mortgage interest; yet
- 30 per cent report that lenders are less likely to proceed with possession action through the courts following the changes.

**Access to Mortgage Rescue Scheme (MRS) in England is problematic:**

It is three months since the MRS in England was introduced.<sup>5</sup> Advisers' early experiences suggest a range of difficulties in getting clients onto the scheme:

- 73 per cent of advisers that have tried to get clients accepted onto the scheme report problems
- 59 per cent report problems concerning property in negative equity<sup>6</sup>, 46 per cent regarding clients' homes being worth more than the limit for the scheme, 44 per cent report that clients do not meet the priority need criteria and 33 per cent report that clients are not eligible for homelessness assistance
- 20 per cent report that clients' lenders are unwilling to participate in the scheme.

**Clients whose homes have been repossessed primarily move to the private rented sector and need support with their money problems**

Following repossession:

- 80 per cent of advisers surveyed report that clients move into the private rented sector, 51 per cent report that they apply to the local authority and are accepted as homeless and 46 per cent report that they move in with family and friends<sup>7</sup>; and
- 82 per cent report that clients need debt advice, 51 per cent report they need financial capability or money guidance and 42 per cent report that clients need emotional support.<sup>8</sup>

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<sup>5</sup> CLG monitoring data covering 71 per cent of the schemes in operation, indicates that only one household has been accepted on the scheme CLG Live Table 1303, [www.communities.gov.uk](http://www.communities.gov.uk).

<sup>6</sup> Paragraph 5.69 of Budget 2009 sets out changes to the MRS whereby households in negative equity can be eligible for the schemes.

<sup>7</sup> Advisers were asked about the three most likely outcomes for their clients following repossession and therefore percentages sum to over 100 per cent.

<sup>8</sup> Advisers were asked about the specific help clients need following repossession, and asked to select up to three responses. Therefore percentages sum to over 100 per cent.

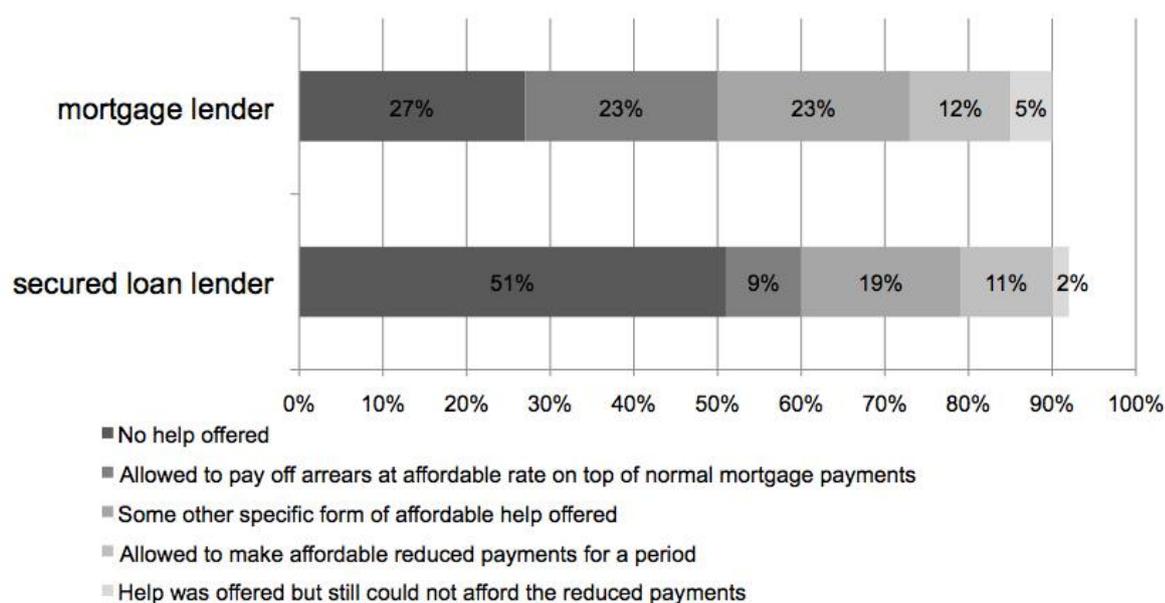
## 1. Borrower Survey Findings

### Experiences of borrowers in mortgage arrears

National Debtline callers with mortgage or secured loan arrears were surveyed about how their lender(s) had responded to the situation. They were asked whether their lender offered any help when told about their repayment problems<sup>9</sup> (shown in Chart 1) and whether they were satisfied with the way they were treated by their mortgage lender<sup>10</sup>. Borrowers in arrears with their mortgage had more positive experiences than borrowers in arrears with their secured loan:

- 27 per cent of those in arrears with their mortgage said their lender offered them no help when told about their repayment problems compared to 51 per cent of those in arrears with their secured loan
- 57 per cent of those in arrears with their mortgage were satisfied with the way they were treated by their lender compared to only 34 per cent of those in arrears with their secured loan.

**Chart 1: Lenders' responses to borrowers' repayment problems**



Source: NDL survey of borrowers in arrears with their mortgage and/or secured loan

Base: 497 borrowers in mortgage arrears (in arrears with first charge loan), 128 borrowers with secured loan arrears (in arrears with second charge loan)

<sup>9</sup> Callers were asked: When you told your first mortgage lender about your repayment problems, did they offer any help? When you told your second charge lender about your repayment problems, did they offer any help?

<sup>10</sup> Callers were asked: Were you satisfied with the way you were treated by your first mortgage lender? Were you satisfied with the way you were treated by your second mortgage lender?

## 2. Adviser Survey Findings

### Arrears practices

On 19 November 2008, a pre-action protocol for mortgage possession claims was introduced in England and Wales. The aim of the protocol is to encourage lenders and borrowers to “act fairly and reasonably with each other” to resolve the arrears problem and to encourage more pre-action contact between the parties to seek agreement, where possible. The protocol applies to all possession claims for arrears on:

- mortgages and home purchase plans (e.g. Islamic mortgages) which are regulated by the Financial Services Authority under the Financial Services and Markets Act 2000;
- secured loans regulated by the Consumer Credit Act 1974; or
- unregulated mortgages.

The protocol only applies to mortgages, home purchase plans and secured loans on residential property.

In the survey, advisers were asked to evaluate their experiences of helping clients with mortgage and secured loan arrears since the date the pre-action protocol was introduced. The survey found that overall, mainstream lenders’ arrears and possession practices had largely improved, whereas the practices of sub-prime lenders and second charge secured lenders had remained the same. As research for the Financial Services Authority has found that sub-prime lenders’ arrears practices are significantly worse than those of mainstream lenders, this is of concern.<sup>11</sup> A key difference between types of lender is outlined below:

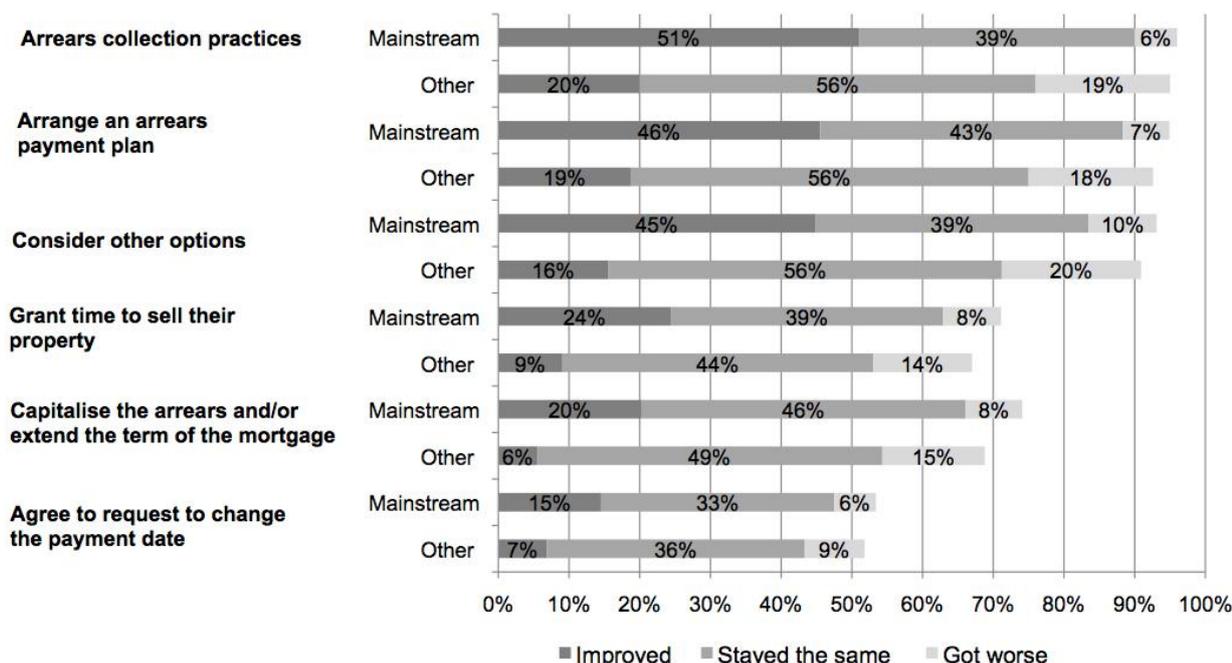
- 78 per cent of advisers surveyed agree that mainstream or high street lenders are less likely to take possession action where the borrower can afford the current mortgage instalment plus an affordable amount of the arrears whereas;
- 52 per cent of advisers surveyed agree that other mortgage or secured lenders are less likely to take possession action where this is the case.

Chart 2 shows other differences in arrears collection practices.

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<sup>11</sup> FSA press release 5 August 2008

**Chart 2: Lenders arrears collection practices**



Base: varies according to the number of respondents that answered each question (377-382). Percentages displayed in the chart do not sum to 100 as they are also based on 'No view/have not seen any cases' responses

Advisers also left comments on their experiences. For example:

*“The sub prime market lenders have become even more reluctant to help clients than before. They apply for possession at the very first sight of a default on a mortgage where.... mortgage companies are, in the main, taking a more reasoned approach to arrears.”*

*“Secured loans, with sub prime lenders, are the most problematic.... They are the prime reason for my attendance at court, with clients and where high street lenders have either consolidated the arrears into a longer term [loan], or agreed a [reduced] payment, sub prime lenders have just not done this.”*

*“Since late Feb 2009 the number of possession hearings has fallen in the local County Court, however this seems to be viewed by the [agencies involved] as [a] temporary slowdown whilst the lenders follow the new Protocol (or taking the cynical view - go through the motions of following the Protocol).”*

Advisers were asked how willing lenders appeared to grant borrowers time to sell the property<sup>12</sup> or capitalise the arrears or extend the term of the mortgage. In both cases, advisers reported that lenders were less likely to offer these types of forbearance. This

<sup>12</sup> Where there is equity in the property

may be attributed to falling house prices, particularly if there is little or no equity in the property.

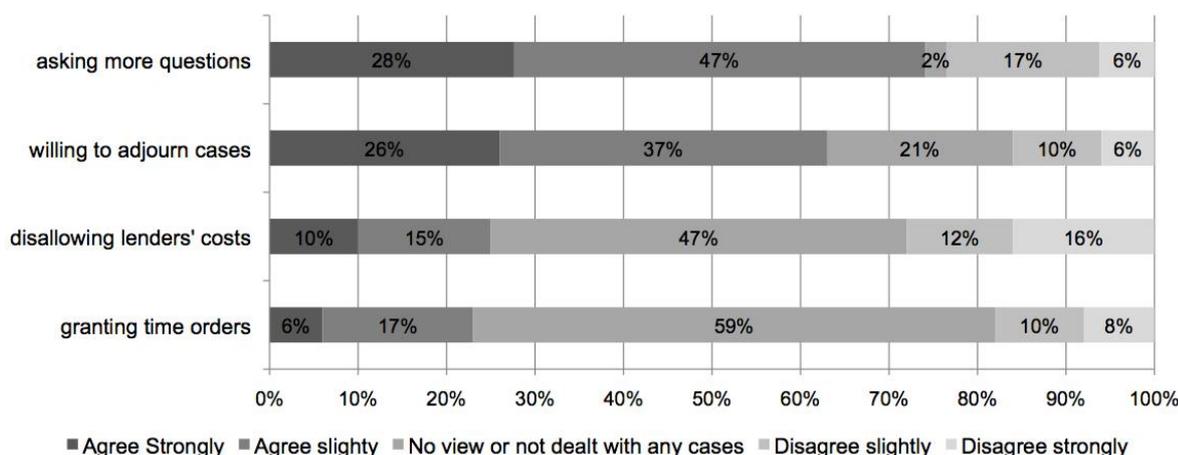
### Courts and the pre-action protocol

Courts should ensure that the pre-action protocol has been complied with. The protocol does not contain any sanctions for non-compliance, but it is likely that it is within the judge’s discretion to adjourn the proceedings until the necessary steps have been taken.

Of the advisers surveyed, 127 had represented clients in court since the pre-action protocol came into force. They were asked to give their impressions of how the courts applied the pre-action protocol and other remedies such as time orders (Chart 3). The findings suggest that the judiciary have responded to the spirit of the protocol to some extent:

- 74 per cent of advisers surveyed agree that judges are asking more questions about the lenders’ attempts to reach agreement with the borrower before taking court action (compared to 24 per cent who disagree), and
- 63 per cent agree that judges are willing to adjourn cases where the lender does not appear to follow the protocol (compared to 17 per cent who disagree).

**Chart 3: Judges’ actions in response to lender practices**



Base: 127 – all respondents that had represented clients in court since the pre-action protocol came into force.

Advisers that had represented clients in court were less likely to have seen cases where judges had considered granting time orders (in cases involving Consumer Credit Act loans) or had disallowed lenders’ costs (where the lender did not appear to have followed the protocol).

The latter finding can be attributed to the lack of sanctions for non-compliance in the mortgage pre-action protocol and the lack of guidance to the courts in dealing with the cost consequences of non-compliance, either in the protocol itself or in the new Practice

Direction on pre-action conduct.<sup>13</sup> Previous research shows that advisers find it difficult to persuade judges to challenge lenders' costs and make time orders.<sup>14</sup> Advisers gave more detail on their experience of trying to persuade the courts to apply the protocol:

*"The [District Judge] will adjourn if there is evidence that the protocol has not been complied with but does not penalise on costs as he says the claimant can claim their costs from the defendant anyway. One judge is more proactive re the protocol even though both are prompted."*

*"The judges don't seem to use the pre-action protocol - our senior judge states it's too early to consider yet when this is raised at a hearing. However, he is becoming more inventive with orders e.g. [suspended possession order] with nothing towards arrears or 6 month possession order (these are very rare)."*

*"Different [District Judges] at county courts will choose whether or not to apply the pre-action protocol for mortgage arrears. So therefore on one week we can be very successful at stopping possession cases where the protocol has not been followed, and another week we have no joy!"*

These findings suggest that the protocol itself and mortgage legislation may need revision to provide better protection for people facing court action for mortgage arrears.

### **Changes to Support for Mortgage Interest**

From 5 January 2009, social security legislation was changed to improve the Support for Mortgage Interest scheme (SMI) for claimants of income support, income-based jobseekers allowance, income-based employment and support allowance and pension credit. The changes were:

- To increase the capital limit for eligible loans from £100,000 to £200,000
- To decrease the waiting period before interest is payable from 26 or 39 weeks to 13 weeks<sup>15</sup>
- To keep the standard interest rate used for calculating support for mortgage interest at 6.08 per cent despite the substantial decrease in interest rates for 6 months This has been extended to a further 6 months in the Budget 2009.

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<sup>13</sup> The pre-action protocol does not include any sanctions (in contrast to the rent arrears protocol) such as adjourning with liberty to restore, dismissing or striking out claims. The question of costs is complicated by the fact that mortgage contracts usually contain an agreement by the borrower to indemnify the lender against any legal costs incurred in the recovery or enforcement of arrears. There is case law authority which suggests that the courts have power to disallow costs where they have been unreasonably incurred or to order that costs should not be added to the security, but there is an urgent need for clarification of the court's powers, whether through legislation or by way of practice direction.

<sup>14</sup> *Set up to fail – CAB clients' experience of mortgage and secured loan arrears*, December 2007, Citizens Advice.

<sup>15</sup> This does not apply to claimants of pension credit who receive full support for mortgage interest from the start of their claim

The changes were designed to help stop up to 10,000 households from losing their homes due to mortgage arrears.

The findings of the survey suggest that it is too early to assess whether this is the case. Of advisers surveyed:

- 46 per cent report no real difference in lenders' practice following the changes to support for mortgage interest, yet
- 30 per cent report that lenders are less likely to proceed with possession action through the courts following the changes.

Advisers gave more detail about their experience of helping clients claim SMI:

*"If both [first and second charge] lenders are in the sub-prime bracket and they are waiting 13 weeks before help with SMI, [borrowers] are often being told by the lenders that they will go for repossession anyway."*

*"Lenders now appear to be much more willing to agree to adjournments, especially in cases where there are SMI problems"*

*"Although the 13 week waiting period for SMI is an improvement, often due to shortened working hours and decreased wages prior to redundancies and unemployment, many clients are already in mortgage arrears before they claim JSA / IS and mortgage companies are not prepared to wait the additional time period for SMI to come into payment."*

### **Mortgage Rescue Scheme in England**

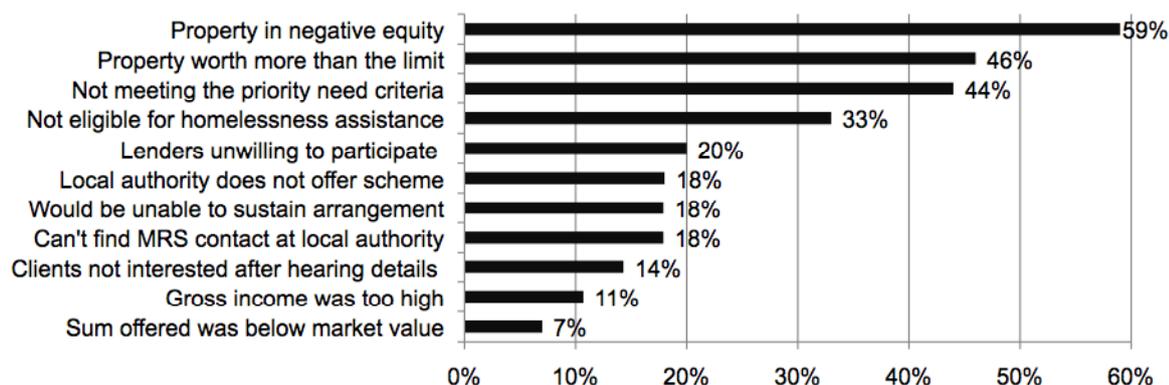
The Mortgage Rescue Scheme in England came into effect on 16 January 2009. It was designed to help up to 6,000 households avoid repossession. It has two options:

- Shared equity
- Mortgage to rent.

Both are offered by a registered social landlord, and debt advice plays a crucial role in the scheme.

It is too early to assess whether the scheme is successful.

The scheme may not be relevant for all clients and 127 advisers in the survey report that they have tried to get their clients accepted on the Mortgage Rescue Scheme in England. Of these, 73 per cent report problems trying to get clients accepted onto the scheme and Chart 4 shows the problems clients are experiencing with the schemes.

**Chart 4: Problems experienced by clients in accessing MRS in England**

Base: 100 – all respondents that had encountered problems getting their clients accepted onto the scheme and that had answered these questions

Note: respondents were asked to choose all relevant responses to this question and therefore percentages sum to over 100 per cent.

While some of these problems (negative equity, and value of the property) may be reduced through planned changes to the scheme (or changes that are being considered); a fifth of advisers reported that some lenders are unwilling to participate in the scheme.

Advisers also commented that:

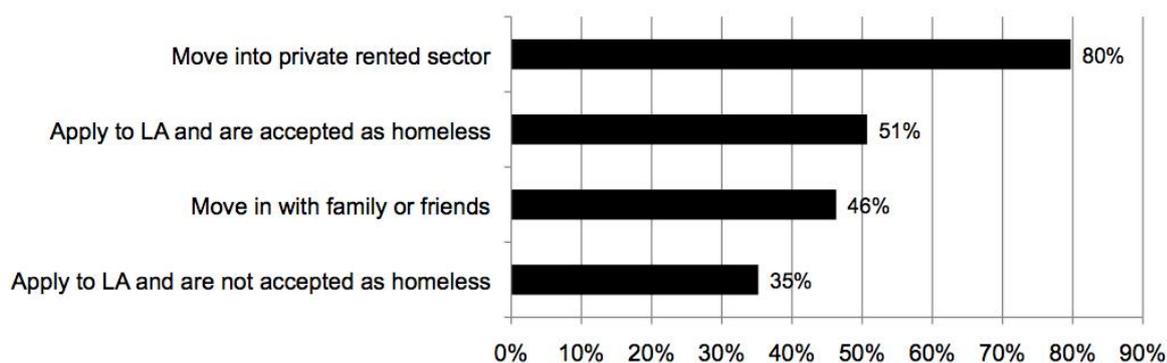
*“MRS applicants are likely to have tried to resolve their situation over months before seeking advice whilst arrears build and equity reduces. Very few clients are in positive equity by the time we see them in our office or at court. Our local authority, however, is very pro-active in referring potential MRS cases, but all have been excluded from the scheme for the above reasons.”*

*“Very few clients are eligible for MRS - those accepted have fallen into negative equity before the scheme could complete and are no longer eligible!”*

## Outcomes and support for clients whose homes have been repossessed

Advisers were asked about the three most likely outcomes for their clients following repossession<sup>16</sup>. Advisers reported that moving to the private rented sector, applying to the local authority as homeless and moving in with family and friends were most common (see Chart 5 for more details).

**Chart 5: Likely outcomes for clients following repossession**

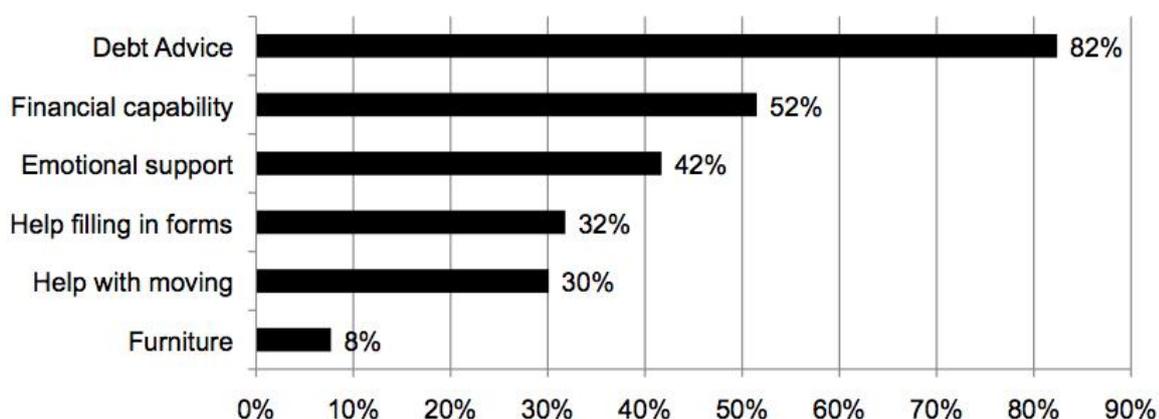


Base: 335 – All respondents that had answered these questions

Note: respondents were asked to choose up to 3 responses to this question and therefore percentages sum to over 100 per cent.

Advisers were also asked about the specific help clients need following repossession, and asked to select up to three responses.<sup>17</sup> Most common responses were debt advice, financial capability or money advice and emotional support (see Chart 6 for more details).

**Chart 6: Help needed by clients following repossession**



Base: 336 – All respondents that had answered these questions

Note: respondents were asked to choose up to 3 responses to this question and therefore percentages sum to over 100 per cent.

<sup>16</sup> Advisers were asked “Thinking about the cases you’ve dealt with in the last six months, what are the three most likely outcomes for your clients following repossession?”

<sup>17</sup> Advisers were asked to select up to three responses to this question.